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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,678	12/21/2001	Boris G. Traktovenko	60,469-055; OT-4994	4980

7590 04/28/2004

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EXAMINER
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FLANDRO, RYAN M

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 04/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**SUPPLEMENTAL  
Advisory Action**

Application No.

10/036,678

Applicant(s)

TRAKTOVENKO ET AL.

Examiner

Ryan M Flandro

Art Unit

3679

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): rejection of claims 1-4, 10-12, 20, 21 and 28.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: 1-4, 10-12, 20, 21 and 28.

Claim(s) objected to: 25.

Claim(s) rejected: 13-19, 23, 24 and 26.

Claim(s) withdrawn from consideration: 5-9.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☒ Other: See Continuation Sheet

  
**JJ Swann**  
Supervisory Patent Examiner  
Technology Center 3600

Continuation of 5. does NOT place the application in condition for allowance because: many of Applicant's arguments are unpersuasive for reasons set forth in the final rejection (paper no. 7). Additionally, Applicant's arguments that neither Schmidt nor Brendal disclose an extruded socket portion is not persuasive. The method of forming a device is not germane to the issue of patentability of the device itself. This limitation has been given limited patentable weight. Also, Applicant's argument regarding the anticipation rejection of claim 26 by Brendel is also unpersuasive. The language "manipulate relative to" does not necessarily mean that the wedge must "move" relative to the brace, at least not within a broad interpretation of the common definition of these terms.

Continuation of 10. Other: This Supplemental Advisory Action is being sent out in order to clarify the record. Under category 7 of the previous Advisory Action the Examiner incorrectly checked the "will not be entered" box. In view of Applicant's amendment of 4 November 2003, the Examiner should have checked the "will be entered" box. The amendment has thus been entered upon applicant's appeal.